Filed 2/18/05 Hebrew Academy of San Francisco v. Regents of the University of Cal. CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

HEBREW ACADEMY OF SAN FRANCISCO, et al., Plaintiffs and Appellants, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Defendant and Respondent.	A106905 (San Francisco County Super. Ct. No. 414796)

I. INTRODUCTION

Appellants Hebrew Academy of San Francisco and Rabbi Pinchas Lipner (appellants) appeal from an order of the San Francisco Superior Court awarding respondent Regents of the University of California (Regents or the Regents) slightly over $76,000 in attorney fees under Code of Civil Procedure section 425.16, subdivision (c), (section 425.16(c)) for successfully prosecuting a SLAPP motion in a defamation action brought by appellants against the Regents and other defendants. We affirm.

II. FACTUAL AND PROCEDURAL BACKGROUND

In their second amended complaint filed March 13, 2003, appellants alleged that the Regents, along with several earlier-named defendants, had defamed them by recording, printing and maintaining, as part of its Regional Oral History Office, an interview with co-defendant Richard Goldman in which the latter made a number of allegedly false and defamatory statements about both appellants.

The Regents originally demurred to the second amended complaint based largely on the statute of limitations, but the court overruled that demurrer, after which the Regents filed their answer. Less than two weeks later, the Regents filed a motion to strike the second amended complaint under section 425.16. A hearing was held on that motion on July 29, 2003, after which the court took the matter under submission. On September 9, 2003, it filed an order granting the Regents' motion; the order stated that the Regents had met their burden of establishing that appellants' defamation claim involved "a statement made 'in connection with a public issue' pursuant to" section 425.16 and, further, that appellants had not met their burden of establishing a probability of success on the merits because the applicable statute of limitations (Code Civ. Proc., § 340, subd. (c)) had run. Accordingly, appellants' second amended complaint was ordered stricken as to the Regents.

On or about February 3, 2004, the Regents filed a motion for attorney fees pursuant to section 425.16(c); the motion asked for fees totaling $98,706.50 and costs of $9,739.79. Appellants opposed this motion and the Regents replied to this opposition. A hearing on the attorney fee motion was held on March 16, 2004 and, on April 7, 2004, the court filed its order awarding the Regents fees in the amount of $76,300 and costs in the amount of $375, plus post-judgment interest. Appellants filed a timely notice of appeal.

III. DISCUSSION

The operative statute, section 425.16(c), provides, insofar as pertinent here: "In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs." (§ 425.16(c).)

Recently, our Supreme Court elaborated on the application of this subdivision as follows: "[U]nder Code of Civil Procedure section 425.16, subdivision (c), any SLAPP defendant who brings a successful motion to strike is entitled to mandatory attorney fees. The fee-shifting provision was apparently intended to discourage such strategic lawsuits against public participation by imposing the litigation costs on the party seeking to 'chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' (*Id*., subd. (a).) The fee-shifting provision also encourages private

representation in SLAPP cases . . . ." (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1131 (*Ketchum*).)

The parties agree, as indeed they must, that our standard of review of trial court orders awarding attorney fees under section 425.16(c) (and, indeed, in almost all other contexts) is abuse of discretion. Quoting an earlier decision of another appellate court, one of our sister courts summarized this point thusly: "'"The matter of reasonableness of attorney's fees is within the sound discretion of the trial judge. [Citations.] Determining the weight and credibility of the evidence, especially credibility of witnesses, is the special province of the trier of fact. [Citation.]" [Citation.] "In determining what constitutes a reasonable compensation for an attorney who has rendered services in connection with a legal proceeding, the court may and should consider 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded . . . the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed.' [Citations.]" [Citations.]'" (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659, disapproved on other grounds in *Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 68, fn. 5; see also, to the same effect, *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1094-1095; *Ketchum, supra,* 24 Cal.4th at p. 1140; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1426; *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th 1219, 1248.).

Appellants contend the trial court abused its discretion here principally because: (1) there was no "substantial evidence" regarding how the 300 plus hours of attorney and paralegal time claimed by the Regents' counsel was spent, i.e., that their claim was "unsubstantiated" and lacked "itemized billings"; (2) in any event, the time claimed was "huge" and "outrageous" under all the circumstances, particularly the circumstance that Regents' counsel relied on statute-of-limitations research substantially already undertaken by counsel for their co-defendants.

Subsidiary to their first contention, the lack of itemized billing, appellants object to the Regents' position that attorney and paralegal time sheets regarding the work of their attorneys and paralegals are privileged and also complain that the information provided by the Regents, i.e., "the total amount of time spent by each person on each motion . . . and the total amount billed by each person each month . . . was insufficient for proper opposition . . . ."

In sum, appellants complain that the time spent by Regents' counsel—for which they were ultimately assessed over $76,000—was "so much time with so little to show for it."

We readily acknowledge that the sum assessed is somewhat large, particularly bearing in mind the status and nature of appellants.[1] But, and bearing in mind both our standard of review and various other factors to be noted hereafter, we cannot agree that the trial court abused its discretion in making the attorney fee and cost award it did. Our conclusion in that regard is based upon several separate and distinct considerations.

First of all, Regents' counsel's time was not devoted to just one motion, but actually four. The first was the demurrer they filed to the second amended complaint. That demurrer was based on the contention that the applicable statute of limitations, Code of Civil Procedure section 340, subdivision (c), had run and thus appellants' action was barred. Although unsuccessful on this round of pleadings, that issue became crucial later, at the SLAPP motion stage, and hence the Regents were entitled to rely on the legal research involved in it.[2]

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[1] However, as the Regents note in their briefs to us, and also observed in oral argument to the superior court, it is not at all unusual for attorney fee claims and awards in SLAPP cases to involve substantial sums, even sums in excess of those claimed and awarded here. (See, e.g., *Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322, 360 [$77,835]; *Church of Scientology v. Wollersheim, supra,* 42 Cal.App.4th at p. 658 [$130,507].)

[2] The facts that the Regents' co-defendants had also raised and relied upon the statute of limitations issue at the demurrer stage, and that all defense counsel relied largely on the same cases, do not minimize the relevance of the legal research undertaken on this issue. In the first place, no case has ever held that one defendant's counsel is

The second pleading phase involved the SLAPP motion itself. Of necessity, the research concerning, and preparation of, this motion involved, as the statute mandates, attention to two separate and distinct issues, first of all whether the complaint as to which the motion is directed involves "any act . . . in furtherance of the person's right of petition or free speech under the United States of California Constitution in connection with a public issue" and, second, whether there is a "probability that the plaintiff will prevail on the claim." (Code Civ. Proc., § 425.16, subd. (b)(1).)

The latter issue involved, as just noted, the same statute of limitations issue raised at the demurrer stage. But the preliminary issue required demonstrating to the trial court that the statement being attacked as defamatory implicated both the exercise of free speech and a "public issue." As this court pointed out twice very recently, at least the latter issue is often not free from doubt. (See *DuCharme v. International Brotherhood of Electrical Workers* (2003) 110 Cal.App.4th 107, 115-119, *Rivero v. American Federation of State, County, and Municipal Employees, AFL-CIO* (2003) 105 Cal.App.4th 913, 919-929, and cases cited in both.) More importantly, the issue often involves the gathering together of considerable historical information concerning the nature of the statement or statements which are the subject of the litigation. Such, indeed, was apparently the case here, as the Regents' SLAPP motion was supported by a declaration from an assistant director of the Bancroft Library which, in turn, attached more than 350 pages of documentation.

The third pleading stage involved a motion filed by appellants themselves, in which they sought discovery in order, allegedly, to defend against the SLAPP motion. The Regents successfully opposed this motion, a process which involved both further legal research and drafting and then argument in the superior court.

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required to defer to the legal research of another defendant's counsel in circumstances of this sort. Secondly, appellants admit that the Regents' counsel came up with additional authorities on the statute of limitations issue to those cited by co-defense counsel at the demurrer stage.

The fourth and final pleading stage involved the motion for attorney fees itself, as the law is clear that a successful SLAPP movant is entitled to recover "fees on fees" under the statute. (*Ketchum, supra,* 24 Cal.4th at p. 1141.) As a result, all of the time spent by the Regents' counsel in putting together the motion the result of which was the order being appealed from was and is includable, also.

Next, the Regents' attorney fee motion included the declarations of three counsel, plus a breakdown of the hours spent by the various attorneys and staff involved in this four-motion effort. The breakdown was both by month and by individual attorney and staff member. Appellants argue that this is insufficient, because it did not include the timesheets or "itemized accountings" for these attorneys and paralegals, nor breakout precisely what issues they were researching or otherwise working on at any specific time. We reject this argument, because the law is clear that neither attorney/paralegal timesheets or "itemized billings" rendered to clients (assuming for purposes of discussion that law firms such as the one representing the Regents supply "itemized billings" to their clients) are required to support a motion such as the one involved here. (See, e.g., *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 558-559; *Steiny & Co. v. California Electric Supply Co.* (2000) 79 Cal.App.4th 285, 293; *Padilla v. McClellan* (2001) 93 Cal.App.4th 1100, 1106-1107.) Contrary to appellants' suggestions, nothing in our Supreme Court's recent opinion in *Ketchum* hints to the contrary.[3] (See *Ketchum, supra,* 24 Cal.4th at pp. 1140-1142.)

Also regarding the time and effort invested by the Regents' counsel, it is instructive that nowhere in their argument to either the superior court or to us do appellants argue that the billing rates claimed for any of those counsel was above and beyond that normally charged in the San Francisco Bay Area by partners, associates and staff of major law firms for litigation of this sort.

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[3] We thus need not reach the issue of whether the billing sheets and time records of the Regents' counsel are "privileged," as briefly claimed by the Regents in their brief to us and strenuously argued against by appellants.

Finally, it should be especially noted that the superior court did not grant the Regents all they asked for. Their initial motion asked for a total of $98,706.50 in attorney and staff fees and $9,739.79 in "associated costs." In their reply brief, the former figure had grown to $99,051.50, while the latter had shrunk to $8,035.94. At the hearing on the motion on March 16, 2004, he Regents' lead counsel made clear that he was not asking for any more than the "lodestar," i.e., the number of hours reasonably spent multiplied by the reasonable hourly rate, notwithstanding the holding in *Ketchum* that fee enhancements are permitted in SLAPP cases (See *Ketchum, supra,* 24 Cal.4th at pp. 1135-1136.) After hearing from both counsel, the court stated that it would grant the motion but would take the matter under submission to further consider the amounts of fees and costs to be awarded. The court directed the Regents to prepare a proposed order including their final amounts requested for fees and costs. Approximately three weeks later, the court entered its order granting fees and costs to the Regents. But in so doing, it reduced the amount requested by almost 25% (from $99,051.50 to $76,300.00 for fees, and from $1,090.20 to $375.00 for costs).

Under all of these circumstances, the superior court did not abuse its discretion in making the award it did.

IV. DISPOSITION

The order appealed from is affirmed.

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Haerle, J.

We concur:

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Kline, P.J.

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Lambden, J.